

Internal Revenue Service

Department of the Treasury

Date: JUN 21 1999

Employer Identification Number:

Form Number:

1120

Tax Years Ending:

and forward

Key District:

Person to Contact:

Contact Telephone Number:

Contact Person ID#:

90 Day Date: SEP 20 1999

Dear Applicant

This is a final adverse determination as to your exempt status under section 501(c)(3) of the Internal Revenue Code.

Our adverse determination was made for the following reason(s)

You have failed to establish that you are organized and operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code. You are operated for private benefit and your earnings inure to the benefit of private individuals.

Contributions to your organization are not deductible under Code section 170(c)(2)

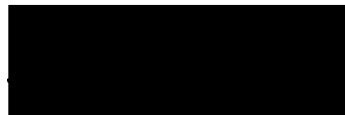
You are required to file Federal income tax returns on the form indicated above. Based on the financial information you furnished, it appears that returns should be filed for the above years. Processing of income tax returns and assessment of any taxes due will not be delayed because you have filed a petition for declaratory judgment under Code section 7428. You should file returns for later years with the appropriate service center shown in the instructions for those returns.

If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, a petition to the United States Tax Court, the United States Court of Claims, or the District Court of the United States for the District of Columbia must be filed within 90 days from the date this determination was mailed to you. Contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment.

We will notify the appropriate State officials of this action, as required by Code section 6104(c).

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

A solid black rectangular box used to redact the signature of the Associate Chief.

Associate Chief

A solid black rectangular box used to redact the footer information.

Internal Revenue Service

Department of the Treasury

District  
Director

Person to Contact:

Telephone Number:

Refer Reply to:

Date: FEB - 2 1998

CERTIFIED MAIL

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue code and have determined that you do not qualify for exemption under that section. Our reasons for this conclusion and the facts on which it is based are explained below.

The information submitted shows that you were incorporated under the laws of the State of [REDACTED] on [REDACTED]. You are organized and operated exclusively for educational and charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

Your purposes state: "This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. The corporation is organized under the Nonprofit Public Benefit Corporation Law for charitable and educational purposes to aid the poor and disadvantaged individuals and families towards a life of self-sufficiency. Your programs will consist of, but shall not be limited to : Troubled youth, workshops, job training, job placement, Land Acquisition Housing, employment, literacy, counseling, temporary shelter, teenage pregnancy, substance abuse awareness and prevention, tutoring, AIDS, Elderly care and other programs to aid those in need.

You anticipate income from gifts, grants and contributions from the public, and from Federal government programs.

Your expenses are projected for salaries and benefits, rent, materials, computer software, expendable equipment, equipment, computer hardware, supplies, insurance, and communications.

Your response to letter dated [REDACTED], indicates that [REDACTED] of your organization's time will be devoted to providing on-the-job-training to underprivileged and/or unskilled individuals in cosmetology and nail care for future employment, and [REDACTED] of your organization's time will be used to lease or purchase through financial institutions or personal financing abandoned or rundown house for rehabilitation for low to moderate income families and individuals. Individuals will be able to rent and/or purchase the homes provided they meet qualifications standards established by the financial institution.

Individuals selected for the job training program will serve a 24 month as a apprentice hair dresser or three months as a nail technician, at the "[REDACTED]". This salon is owned by the President of [REDACTED].

Participants in the hairstyling program will be required to pay an initial fee of \$[REDACTED] to cover the cost of supplies and equipment for the first six months. After the first six months, participants may be compensated for their services and will be assessed a nominal fee based on their income by the owner/operator of the salon for supplies, equipment, and booth rental. Nail care trainees will pay an initial fee of \$[REDACTED] for supplies and equipment; and, after three months, the technician may be assessed a nominal fee from any income received once determined competent to perform manicures/pedicures.

It has been shown that [REDACTED] is paid \$[REDACTED] a year for salary as President of [REDACTED], and receives compensation of \$[REDACTED] an hour to provide job training. Salaries are also paid to [REDACTED] (\$[REDACTED] an hour) and [REDACTED] (\$[REDACTED] an hour) to provide instruction. The individuals are also employees of [REDACTED].

Section 501(c)(3) of the Internal Revenue Code provides for exemption from Federal income tax for organizations which are organized and operated exclusively for charitable, religious, and educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to qualify for exemption under section 501(c)(3), an organization must be both organized and operated exclusively for one or more exempt purposes. Failure to meet either the organizational or operational test will disqualify an organization from exemption under section 501(c)(3).

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish such purposes. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. Thus, in construing the meaning of the phrase "exclusively for educational purposes" in Better Business Bureau v. United States, 326 U.S. 279 (1945), the Supreme Court of the United States stated, "This plainly means that the presence of a single non-educational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes."

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations states that an organization is not organized or operated for any purpose under section 501(c)(3), unless it serves a public rather than a private interest. Thus to meet the requirements of this subparagraph, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization or persons controlled, directly or indirectly, by such private interests. Moreover, even though an organization may have exempt purposes, it will not be considered as operating exclusively for such purposes, if more than an insubstantial part of its activities serve private interests.

Section 1.501(c)(3)-1(e)(1) of the Regulations provides that an organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operations of such trade or business are in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business as defined in section 513. In determining the existence or nonexistence of such primary purpose, all the circumstances must be considered, including the size and extent of activities which are in furtherance of one or more exempt purposes.

In Better Business Bureau v. United States, 326 U.S. 279-283, (1945), the court held that the existence of a single non-exempt purpose, if substantial in nature, will destroy exemption under section 501(c)(3) regardless of the number or importance of truly exempt purposes. To qualify for exemption under section 501(c)(3), the applicant organization must show (1) that it is organized and operated exclusively for religious, or charitable purposes, (2) that no part of the net earnings inures to the benefit of a private individual or shareholder, and (3) that no substantial part of its activities consists of the dissemination of propaganda or otherwise attempting to influence legislation or engaging in political activity. See Kenner v. Commissioner, 318 F. 2d. 632, (7th Cir. 1963).

In International Postgraduate Medical Foundation v. Commissioner, 56 TCM 1140 T.C. Memo 1989-36, the founder of an exempt organization and for-profit entity was in a position to use the exempt entity to benefit his for-profit business. The exempt organization contracted with the for-profit business to perform services on its behalf. The court stated that when a for-profit entity receives benefits from an exempt organization, the exempt organization is not operated exclusively for charitable or any other purposes no matter how many exempt activities it conducts.

From our review of your activities, it does not appear that you are organized or operated exclusively for charitable or educational purposes. The manner in which you are conducting your activities only serves to benefit your founders and their relatives and employees, like the organization described in International Postgraduate Medical Foundation.

The inurement proscription contained in Regulations 1.501(c)(3)-1(c)(1) states that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. Inurement is likely to arise where the financial benefit represents a transfer of the organization's financial resources to an individual solely by virtue of the individual's relationship with the organization, and without regard to the accomplishment of exempt purposes.

Inurement of income is strictly forbidden under section 501(c)(3) without regard to the amount involved. This proscription applies to persons who because of their particular relationship with an organization have an opportunity to control or influence its activities. Such persons are considered "insiders" for purposes of determining whether there is inurement of income. Generally, an organization's officers, directors, founders, and their families are considered "insiders".

Regulations 1.501(c)(3)-1(c)(1) indicates that an organization will not be exempt under section 501(c)(3) if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. Thus, an organization whose operations result in private benefit that is more than insubstantial, will not be considered as serving an exempt purpose. This private benefit prohibition applies to all kinds of persons and groups, not just to "insiders" subject to the more strict inurement proscription.

Your use of the President's for-profit beauty salon as a job-training program and the payment of instructor salaries to these employees of the for-profit salon is not a charitable use of funds within the meaning of section 501(c)(3).

We are not making a determination on the exempt status of your housing activities under section 501(c)(3), as not enough information was provided to do so.

Therefore, we have concluded that you do not qualify for exemption from Federal income tax as an organization described in section 501(c)(3) of the Code. In accordance with this determination, you are required to file Federal income tax returns on Form 1120.

Contributions to your organization are not deductible by donors under section 170(c)(2) of the Code.

In accordance with the provisions of section 6104(c) of the Code, a copy of this letter will be sent to the appropriate State officials.

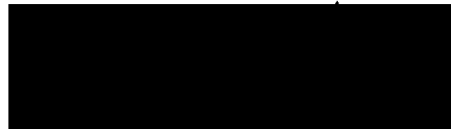
If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this, you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law, and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or, if you request, at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, that person will need to file power of attorney or tax information authorization with us.

If you don't appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination in this matter. Further, if you do not appeal this determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust administrative remedies. Section 7428(b)(2) of the Code provides, in part, that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Appeals submitted which do not contain all the documentation required by Publication 892 will be returned for completion.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,



District Director  
Southeast Region

Enclosure: Publication 892

cc: 